Nagui Mankaruse v. Raytheon Co., et al
SACV 15-1273 JVS (DFMx)

TENTATIVE Order Regarding Plaintiff's Motion to Continue and Defendant's Motion for Summary Judgment

On October 28, 2016, Defendant Raytheon Company ("Raytheon") moved for summary judgment under Federal Rule of Civil Procedure 56 as to the complaint of Plaintiff Nagui Mankaruse ("Mankaruse"). (Raytheon Mot., Docket No. 40.) Mankaruse opposed. (Mankaruse Opp'n, Docket No. 48.) Raytheon replied. (Raytheon Reply, Docket No. 50.)

On November 2, 2016, Mankaruse filed a motion to continue the discovery cutoff date and the trial date. (Mankaruse Mot., Docket No. 43.) Raytheon opposed. (Raytheon Opp'n, Docket No. 44.) Mankaruse replied. (Mankaruse Reply, Docket No. 48.)

For the following reasons, the Court **denies** Mankaruse's motion to continue and **grants in part** Raytheon's motion for summary judgment.

I. BACKGROUND

A. Factual Background

Raytheon employed Mankaruse from 2004 to April 2012. (Compl., Docket No. 1-1 ¶ 6.) In January 2013, Mankaruse sued Raytheon in Orange County Superior Court in Mankaruse II, alleging harassment and discrimination, including wrongful termination, based on age, disability, and national origin. (Docket No. 29-2 at 31-51.) Some of the claims in Mankaruse II were dismissed through summary adjudication. (Id. at 67–70.) The remaining claims (including discrimination on the basis of age and disability) were tried to a jury, who found in favor of Raytheon. (Docket No. 29-3 at 2–10.) Mankaruse filed an appeal in March 2015. (Id. at 20-21.) The appeal is currently pending.[1]

[1] The appellate docket indicates that, as of October 21, 2016, the case has been fully briefed. (Docket for Mankaruse v. Raytheon Co., Cal. Ct. App. Case No. G051651, http://appellatecases.courtinfo.ca.gov/search/case/

In January 2013, Raytheon posted an opening for a senior principal systems engineer under Requisition No. 38112. (Tran Decl., Docket No. 40-2 ¶ 10.) One of the required skills for Requisition No. 38112 is "10+ years recent uniformed service with Land Forces (Army or Marine)." (Id. at 15.) Mankaruse submitted an application for Requisition No. 38112 on July 13, 2013. (Tran Decl., Docket No. 40-2 ¶ 11.) Mankaruse's resume does not mention any military experience. (Tran Decl. Ex. 4, Docket No. 40-2 at 28.) As of July 16, 2013, Raytheon had received 76 applications for Requisition No. 38112. (Id. ¶ 14.) None of the applicants had all of the skills and qualifications required in the requisition, so Raytheon canceled the requisition. (Lewis Decl., Docket No. 40-2 ¶ 4.)

Raytheon posted Requisition No. 44692, which was an opening for a different senior principal systems engineer position, on July 31, 2013. (Tran Decl. Ex. 7, Docket No. 40-2 at 37.) On August 1, 2013, Mankaruse submitted an application for this position. (Tran Decl., Docket No. 40-2 ¶ 18.) As of September 5, 2016, Raytheon received 41 applications. (Tran Decl. Ex. 9, Docket No. 40-2 at 46.) Raytheon did not hire any of the 41 applicants, and it cancelled Requisition No. 44692 on September 5, 2016, without hiring anyone because of budget constraints.[2] (Tran Decl., Docket No. 40-2 ¶¶ 21–22; Ranalli Decl., Docket No. 40-2 ¶ 4.)

B. Procedural Background

In July 2015, Mankaruse filed the current action against Raytheon claiming that, after he was terminated in April 2012, he applied for a new position at Raytheon in 2013, but was not hired due to his age and disability. (Compl., Docket No. 1-1 at 2-19.) Mankaruse asserts eight causes of action: (1) denied employment under the California Fair Employment and Housing Act, Government Code section 12940, et. seq., ("FEHA"); (2) denied re-instatement in discrimination conduct under FEHA; (3) not considered for hiring into positions which he is qualified in discrimination conduct under FEHA; (4) discrimination based on medical condition/disability under FEHA, (5) discrimination based on age under FEHA, (6) retaliation under FEHA, (7) failure to prevent discrimination

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dockets.cfm?dist=43&doc_id=2103782&doc_no=G051651 (last visited December 6, 2016).)

[2] Mankaruse did not apply for Requisition No. 41045. (Tran Decl., Docket No. 40-2 ¶ 23.)

and retaliation in violation of public policy under FEHA, and (8) failure to engage in the interactive process under FEHA. (Id.)

On April 8, 2016, this Court granted in part Raytheon's motion to stay. (Order, Docket No. 35-1.) In its analysis, the Court stated the following:

> Federal district courts may stay an action pending the resolution of state proceedings to facilitate issue preclusion. Silvaco Data Sys., Inc. v. Techn. Modeling Assoc., Inc., 896 F. Supp. 973, 975 (N.D. Cal. 1995). If the judgment for Raytheon is affirmed on appeal, issue preclusion will preclude relitigation of the factual allegations from Mankaruse II in this case, including the harassment and discrimination allegations related to Mankaruse's alleged wrongful termination. The Court therefore grants Raytheon's motion to stay. The Court limits the stay only to the harassment and discrimination allegations at issue in Mankaruse II, however. Mankaruse may proceed on his claims to the extent that they raise factual allegations unrelated to the allegations at issue in Mankaruse II. See Docket No. 1-1 at 7-8 ¶¶ 28-34. The stay specifically extends to all discovery concerning events prior to his 2013 termination.

(Id.)

On April 15, 2015, Mankaruse served his request for production of documents and special interrogatories on Raytheon. (Mankaruse Decl., Docket No. 43 ¶ 6.) On May, 19, 2016, Raytheon served its response to Mankaruse's request for production of documents. (Brown Decl. Ex. 3, Docket No. 44-2 at 76.) On May 19, 2016, Raytheon served its response to Mankaruse's special interrogatories. (Id. at 42.)

On September 12, 2016, Mankaruse filed a motion to compel responses to requests for production. (Mot., Docket No. 38.) The Honorable Douglas F. McCormick denied Mankaruse's motion for two reasons: Mankaruse (1) failed to comply with the Local Rules and (2) submitted discovery requests seeking information from 2012 or earlier, which violates the stay this Court issued. (Order, Docket No. 39.)

II. LEGAL STANDARD

A. Motion to Continue

Federal Rule of Civil Procedure 16(b)(4) provides that: "A schedule [order] may be modified only for good cause and with the judge's consent." The good cause standard "primarily considers the diligence of the party seeking the amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). The court may grant relief from a scheduling deadline if the deadline could not "reasonably be met despite the diligence of the party seeking the extension." Id. While a court may consider prejudice to the opposing party, "the focus of the inquiry is upon the moving party's reasons for seeking modification." Id.

B. Motion for Summary Judgment

Summary judgment is appropriate where the record, read in a light most favorable to the nonmovant, indicates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). Summary adjudication, or partial summary judgment "upon all or any part of [a] claim," is appropriate where there is no genuine dispute as to any material fact regarding that portion of the claim. Fed. R. Civ. P. 56(a); see also Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often fall short of a final determination, even of a single claim . . . .") (internal quotation marks omitted).

Material facts are those necessary to the proof or defense of a claim and are determined by referring to substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255.[3]

[3] "In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion." L.R. 56-3.

The moving party has the initial burden of establishing the absence of a material fact for trial. Id. at 256. "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . ., the court may . . . consider the fact undisputed." Fed. R. Civ. P. 56(e)(2). Furthermore, "Rule 56[(a)][4] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Therefore, if a nonmovant does not make a sufficient showing to establish the elements of its claims, a court must grant the motion.

III. DISCUSSION

Based on the following analysis, the Court **denies** Mankaruse's motion to continue and **grants in part** Raytheon's motion for summary judgment.

A. Motion to Continue

Mankaruse requests the Court to extend the discovery cutoff date and continue the trial date because he "was not able to collect any evidence due to defendant [sic] obstruction of justice, defying this court Order to start the discovery and violating the Local Rule # [sic] and Federal Rule." (Mankaruse Mot., Docket No. 43 at 2.) Mankaruse's main argument is the following:

> Defendants never even get any attention to all the requests, maneuvering and dragging their feet by sending two times documents constitutes [sic] mostly some of the documents that Plaintiff produced to the defendants, but nothing of what was requested. Plaintiff still needs to depose employees and managers at Raytheon to complete discovery after getting all information requested and to be requested from Defendant.

[4] Rule 56 was amended in 2010. Subdivision (a), as amended, "carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word — genuine 'issue' becomes genuine 'dispute.'" Fed. R. Civ. P. 56, Notes of Advisory Committee on 2010 amendments.

(Id. at 3.) Therefore, Mankaruse's argument is that Raytheon has not complied with his discovery requests.

Nevertheless, the Court finds that Mankaruse has not demonstrated good cause by exercising diligence. For instance, Mankaruse waited nearly four months to challenge Raytheon's responses to his discovery requests. Mankaruse states that he served his request for production of documents and special interrogatories on April 15, 2015. (Id. at 9.) On May, 19, 2016, Raytheon served its response to Mankaruse's request for production of documents. (Brown Decl. Ex. 3, Docket No. 44-2 at 76.) On May 19, 2016, Raytheon served its response to Mankaruse's special interrogatories. (Id. at 42.) However, Mankaruse did not file a motion to compel responses to requests for production until September 12, 2016. (Docket No. 38.) Furthermore, Mankaruse has not provided his reason for failing to depose Raytheon employees and managers prior to the discovery cutoff on October 10, 2016.[5] The Court also finds it suspicious that Mankaruse filed his motion after Raytheon moved for summary judgment; Mankaruse cannot overcome summary judgment simply by arguing that he needs to cure his failure to conduct discovery. Therefore, Mankaruse has not shown that he exercised diligence while conducting his discovery.

Additionally, it appears as though Mankaruse seeks production of documents and responses that are outside the scope of discovery. For example, in his order denying Mankaruse's motion to compel, the Honorable Douglas F. McCormick stated the following:

> Second, it is unclear whether the relief Plaintiff seeks is available to him in light of Judge Selna's April 8 order staying this action as to the harassment and discrimination allegations at issue in Mankaruse II. See Dkt. 35-1 at 3 ("Mankaruse may proceed on his claims to the extent that they raise factual allegations unrelated to the allegations at issue in Mankaruse II."). Despite the fact that Judge Selna specifically extended this stay "to all

[5] Mankaruse also cites to the ongoing discussion that he had with Raytheon's counsel between May 2016 and August 2016. (See, e.g., Mankaruse Mot., Docket No. 43 at 10.) However, he has not stated his reason for waiting to dispute Raytheon's discovery production until after Raytheon filed its motion for summary judgment.

> discovery concerning events prior to his 2013 termination," id., many of the discovery requests seek information from 2012 or earlier.

(Order, Docket No. 39.) After examining several of Mankaruse's discovery requests, this Court agrees that Mankaruse is seeking information from 2012 or earlier. (See, e.g., Brown Decl. Ex. 3, Docket No. 44-2 at 19 ("Please describe in details with specificity the work problems YOU were having that required new hire in every situation, if any, when the requisitions of employment for the issued on or after *April 2012* till present.") (emphasis supplied).) Therefore, Mankaruse is seeking information that is not available to him.

In conclusion, the Court **denies** Mankaruse's motion to continue the discovery cutoff date and trial date.

B. Motion for Summary Judgment

The Court **grants in part** Raytheon's motion for summary judgment.

1. Discrimination and Retaliation under FEHA

Mankaruse's first five causes of action are regarding Raytheon's alleged discriminatory hiring practices.[6] In addition, his sixth cause of action is regarding

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[6] Mankaruse's first cause of action states that "Plaintiff was subjected to adverse employment actions and was excluded by denying him of employment in both vacancies and was discriminated against in privileges of employment including, but not limited to his age, and medical disability." (Compl., Docket No. 1-1 ¶ 43 (emphasis in original removed).) In addition, his second cause of action states that "plaintiff was subjected to adverse employment actions and was excluded from reinstating his employment in both vacancies and was discriminated against in privileges of employment including, but not limited to his age, and medical condition/ disability." (Id. ¶ 51 (emphasis in original removed).) His third cause of action also states that plaintiff was subjected to adverse employment actions and was excluded not hired in position which he is qualified in the two vacancies and was discriminated against in privileges of employment including, but not limited to his age, and medical disability." (Id. ¶ 59 (emphasis in original removed).) Mankaruse's fourth cause of action states that "Raytheon was aware of both Plaintiff's medical condition/disability and his need for accommodation yet, in violation of California Code Section 12940(m), it failed to hire Plaintiff because his need for accommodation for his medical condition/Disability." (Id. ¶ 65.) His fifth cause of action states that "plaintiff

Raytheon's alleged retaliatory conduct: "Defendant engaged in retaliatory conducted toward Plaintiff while employed, in 2013 Raytheon denied him employment in advertised positions, denied re-instatement to the company employment force and not considered for hiring into positions which he is qualified." (Compl., Docket No. 1-1 ¶ 80 (emphasis in original removed).)

Therefore, Mankaruse's first six claims fall under two portions of FEHA. FEHA recites that it is an unlawful employment practice "[f]or an employer, because of the . . . physical disability, mental disability, medical condition . . . [or] age . . . of any person, to refuse to hire or employ the person . . . ." Cal. Gov't Code § 12940(a). FEHA also makes it unlawful for an employer to "discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part." Id. § 12940(h).

For discrimination and retaliation claims, California has adopted the three-stage burden shifting test in McDonnell Douglas v. Green, 411 U.S. 792 (1973). Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028, 1042 (2005); Guz v. Bechtel Nat'l, Inc., 24 Cal. 4th 317, 354 (2000). Once the plaintiff has made a prima facie showing of employment discrimination, "the burden then shifts to the employer to offer a legitimate, nondiscriminatory reason for the adverse employment action." Deschene v. Pinole Point Steel Co., 76 Cal. App. 4th 33, 44 (1999). If the employer offers such a reason, "plaintiff must offer evidence that the employer's stated reason is either false or pretextual, or evidence that the employer acted with discriminatory animus, or evidence of each which would permit a reasonable trier of fact to conclude the employer intentionally discriminated." Id.

In regards to Mankaruse's discrimination claims and retaliation claim, the Court finds that summary judgment is appropriate because there is no genuine dispute as to any material fact. Therefore, with regard to Mankaruse's first six claims, Raytheon is entitled to judgment as a matter of law.

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was subjected to adverse employment actions in hiring practice and was excluded from employment in one of the two vacancies and was discriminated against in privileges of employment including, but not limited to his age (Plaintiff was 69 years old), and medical disability." (Id. ¶ 74 (emphasis in original removed).)

a. Prima Facie Case

The Court finds that Mankaruse has failed to show a prima facie case for his discrimination claims and retaliation claim.

i. Discrimination

"The specific elements of a prima facie case may vary depending on the particular facts . . . . Generally, the plaintiff must provide evidence that (1) he was a member of a protected class, (2) he was qualified for the position he sought . . . (3) he suffered an adverse employment action, such as . . . denial of an available job, and (4) some other circumstance suggests discriminatory motive." Guz, 24 Cal. 4th at 355 (citations omitted). In McDonnell Douglas, which involved a plaintiff rejected for a job opening, the fourth element was that the position remained open and the employer continued to seek applications from persons with similar qualifications. 411 U.S. at 802.

Here, Raytheon provided several facts regarding Requisition No. 38112. In January 2013, Raytheon posted Requisition No. 38112, which was a opening for a senior principal systems engineer. (Tran Decl. Ex. 1, Docket No. 40-2 at 14.) One of the required skills for Requisition No. 38112 was "10+ years recent uniformed service with Land Forces (Army or Marine)." (Id. at 15.) Mankaruse submitted an application for Requisition No. 38112 on July 13, 2013. (Tran Decl., Docket No. 40-2 ¶ 11.) Mankaruse's resume does not mention any military experience. (Tran Decl. Ex. 4, Docket No. 40-2 at 28.) Therefore, Raytheon has demonstrated that Mankaruse was not qualified for this position.

In addition, Raytheon provided several facts regarding Requisition No. 44692. Raytheon posted Requisition No. 44692, which was an opening for a different senior principal systems engineer position, on July 31, 2013. (Tran Decl. Ex. 7, Docket No. 40-2 at 37.) On August 1, 2013, Mankaruse submitted an application for this position. (Tran Decl., Docket No. 40-2 ¶ 18.) As of September 5, 2016, Raytheon received 41 applications for this position. (Tran Decl. Ex. 9, Docket No. 40-2 at 46.) Raytheon did not hire any of the 41 applicants, and it cancelled Requisition No. 44692 on September 5, 2016, without hiring anyone. (Tran Decl., Docket No. 40-2 ¶¶ 21–22.) To support its position, Raytheon cites to U.S. v. City and County of San Francisco, 656 F. Supp. 276,

283–84, which is a case regarding disparate impact under Title VII: "where the City ultimately hired and promoted no one, it treated no minority or woman in a manner distinct from white or male applicants for employment purposes, either individually or collectively." On the present record, there is no evidence that Raytheon acted in bad faith when it closed the postings.

In his opposition, Mankaruse's only argument is that "[t]he defendant having a bad faith trying to close the case (steal the case) [sic] by not providing any discovery of meaning to plaintiff to disable him from proceeding in this discrimination case by not responding to the motion for summary judgment and consequently cannot litigate any kind of trial if there are going to be any such trial if this obstruction of justice continue without punishment [sic]." (Mankaruse Opp'n, Docket No. 48 at 3.) Mankaruse also states that "Plaintiff simply have no documents or evidence to use in responding to the summary judgment or at trial, because there is no discovery done so far due to the defendant refusing to cooperating with plaintiff requests [sic]." (Id.) However, as the Court discussed above, Mankaruse has not demonstrated reasonable diligence. See supra Section III.A.

In conclusion, based on the facts that Raytheon provided and Mankaruse's failure to submit a genuine dispute of material fact, the Court finds that Mankaruse cannot prove a prima facie case.

ii. Retaliation

To establish a prima facie case for retaliation "a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." Yanowitz, 36 Cal. 4th at 1042.

Here, Raytheon asserts that Mankaruse cannot prove a causal link between Mankaruse's prior litigation against Raytheon and Raytheon's failure to hire Mankaruse for Requisition No. 38112 or Requisition No. 44692 because Raytheon did not hire any of the applicants for either position. (Tran Decl., Docket No. 40-2 ¶¶ 16, 22.)

Again, in his opposition, Mankaruse's only argument is that the Court

should alter the scheduling order to allow him to conduct further discovery. (Mankaruse Opp'n, Docket No. 48 at 3.) However, as the Court discussed above, Mankaruse has not demonstrated reasonable diligence. See supra Section III.A.

In conclusion, the Court finds that Raytheon has shown an absence of material fact and Mankaruse has failed to provide a genuine dispute of material fact.

b. Legitimate Non-Discriminatory Reason

Raytheon also argues that, even if Mankaruse can prove a prima facie case, it had a legitimate non-discriminatory reason for not hiring Mankaruse.

Once a plaintiff establishes a prima facie case, the burden shifts to the defendant to "produc[e] evidence that the plaintiff was rejected, or someone else was preferred, for a legitimate non-discriminatory reason." Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981). This burden is one of production, not persuasion. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 509 (1993).

Here, Raytheon states that it had a legitimate non-discriminatory reason for not hiring Mankaruse for either position. For Requisition No. 38112, Jennifer Lewis, a hiring manager for Raytheon, states that "none of the applicants had all of the skills and qualifications required in the requisition. Raytheon prefers not to have requisitions posted for extended periods of time without being filled. I therefore decided to cancel the requisition without hiring anyone." (Lewis Decl., Docket No. 40-2 ¶ 4.) In regards to Requisition No. 44692, David Rannalli, another hiring manager for Raytheon, states that "due to budgetary constraints, I decided to cancel Requisition No. 44692 without hiring anyone." (Ranalli Decl., Docket No. 40-2 ¶ 4.) Therefore, Raytheon submitted evidence that it had a legitimate non-discriminatory reason.

The Court finds that Raytheon has met its burden of production.

c. Pretext

Raytheon also argues, in the alternative, that Mankaruse cannot prove pretext.

A plaintiff "can prove pretext in two ways: (1) indirectly, by showing that the employer's proffered explanation is unworthy of credence because it is internally inconsistent or otherwise not believable, or (2) directly, by showing that unlawful discrimination more likely motivated the employer." Chuang v. Univ. of Cali. Davis, Bd. of Trustees, 225 F.3d 1115, 1127 (9th Cir.2000) (internal quotation marks omitted). To show pretext, a plaintiff must "put forth *specific* and *substantial* evidence that [an employer's] reasons are really a pretext." Aragon v. Republic Silver State Disposal Inc., 292 F.3d 654, 661 (9th Cir. 2002) (emphasis in original). "[W]here the prima facie case consists of no more than the minimum necessary to create a presumption of discrimination under McDonnell Douglas, plaintiff has failed to raise a triable issue of fact." Wallis v. J.R. Simplot Co., 26 F.3d 885, 890 (9th Cir. 1994).

Here, Raytheon asserts that Mankaruse cannot prove pretext because Raytheon did not hire a single applicant for either position. (Lewis Decl., Docket No. 40-2 ¶ 4; Ranalli Decl., Docket No. 40-2 ¶ 4.) Raytheon has pointed to an absence of evidence of pretext because it treated every the applicant in the same manner. (Raytheon Mot., Docket No. 40 at 11.)

The Court again notes that Mankaruse's only argument is that the Court should alter the scheduling order to allow him to conduct further discovery. (Mankaruse Opp'n, Docket No. 48 at 3.) However, as the Court discussed above, Mankaruse has not demonstrated reasonable diligence. See supra Section III.A.

In conclusion, the Court finds that Raytheon has shown an absence of material fact and Mankaruse has failed to create a genuine dispute by submitting his own facts.

2. Failure to Prevent Discrimination

Mankaruse states in his seventh cause of action that "Raytheon violated its obligation to prevent discrimination, and retaliation from occurring as provided

under California Government Code section 12940(k) and Taylor v. City of Los Angeles Dept. of Water and Power, 144 Cal. App. 4th 1216 (2006)." (Compl., Docket No. 1-1 ¶ 88 (alteration to citation format).)

Section 12940(k) of the California Government Code states that it is an unlawful employment practice "[f]or an employer . . . to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." The elements of a claim for failure to prevent discrimination or harassment are: "1) plaintiff was subjected to discrimination, harassment or retaliation; 2) defendant failed to take all reasonable steps to prevent discrimination, harassment or retaliation; and 3) this failure caused plaintiff to suffer injury, damage, loss or harm." Lelaind v. City & Cnty. of San Francisco, 576 F. Supp. 2d 1079, 1103 (N.D. Cal. 2008).

Because Mankaruse's discrimination claims and retaliation claim fail, Raytheon is also entitled to summary judgment on Mankaruse's seventh claim for failure to prevent discrimination. See Lee v. Eden Med. Ctr., 690 F. Supp. 2d 1011, 1025 (N.D. Cal. 2010) ("[B]ecause Plaintiff has not supported her FEHA claims of discrimination or harassment, her claim of Defendant's failure to prevent discrimination and harassment fails as well.").

3. Failure to Engage in Interactive Process

Under FEHA, an employer's failure "to engage in a timely, good faith, interactive process with the employee . . . to determine effective reasonable accommodations" is a separate violation of the statute. Cal. Gov't Code § 12940(n); Wilson v. Cnty. of Orange, 169 Cal. App. 4th 1185, 1193 (2009). Employers have a mandatory obligation to engage in the interactive process once an employee requests an accommodation for his or her disability, or when the employer itself recognizes the need for one. Brown v. Lucky Stores, 246 F.3d 1182, 1188 (9th Cir. 2001). To prevail on a section 12940(n) claim, an employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred. Nealy v. City of Santa Monica, 234 Cal. App. 4th 359, 379 (2015).

Although it appears as though Mankaruse cannot put forth any facts demonstrating Raytheon's failure to engage in an interactive process regarding

Requisition No. 38112 or Requisition No. 44692, Raytheon has failed to make any arguments regarding Mankaruse's eighth cause of action. (See Raytheon Mot., Docket No. 40 at 11–12.) Therefore, the Court invites both parties to make arguments regarding this cause of action at the hearing on December 8, 2016.

IV. CONCLUSION

For the aforementioned reasons, the Court **denies** Mankaruse's motion to continue and **grants in part** Raytheon's motion for summary judgment.

IT IS SO ORDERED.